<u>**In the Drawings**</u>:

With this response, applicants forward for approval by the Examiner a new drawing sheet intended to show every feature of the invention specified in the claims. Directly descriptive text is added, in a pseudo claim version of the original claim 36, avoiding the addition of any new matter. The added drawing represents each of the steps of the claim of which the Examiner has requested depiction.

REMARKS

Pending for examination are claims 36-41, 43-51 and 53-60. Claims 42 and 52 are cancelled. The remaining claims are withdrawn and may be reinstated if the elements of allowable claims involve the same scope of search as the withdrawn claims.

Objection to the Abstract

The Examiner **objects to the abstract** as too general in nature. Accordingly, in this response, applicants have submitted a new replacement Abstract.

Objection to the Drawings

The Examiner **objects to the drawings** and requires addition of at lest one new drawing that indicates certain claimed features. Applicants have supplied an additional drawing. Directly descriptive text is added as paragraph [0033A], in a pseudo claim version of the original claim 36, avoiding the addition of any new matter. The added drawing represents each of the steps of the claim of which the Examiner has requested depiction.

Objection to Claims 42 and 56-57

The Examiner **objects to claims 42 and 56-57**, requiring cancellation of claim 42 and amendment of claims 56-57 to overcome informalities. We have cancelled and amended accordingly.

Rejection Under 35 U.S.C. § 103(a) of Claims 36-51 and 53-63

The Examiner rejects **claims 36-51 and 53-63** under 35 U.S.C. § 103(a) as unpatentable over Landvater (U.S. 6,609,101) in view of Dulaney et al. (U.S. 6,341,269).

Claim 36

Claim 36 includes the limitations:

A method of prorating inventory budgets among items, including:

setting inventory budgets for groups of items;

projecting future demand for the items;

setting notional deliveries for the items, utilizing the projected future demand unconstrained by the inventory budgets;

simulating future inventory for the items, utilizing current inventory, the

> projected future demand, firm future deliveries and the notional deliveries;
>
> prorating the inventory budgets among the items, for a plurality of predetermined time periods; and
>
> reporting open to buy values that compare the prorated inventory budgets for the items or aggregations of the items to the simulated future inventory for the items or aggregations of the items.

These limitations are not found in Landvater in view of Dulaney et al.

There are two basic problems with the rejection. First, Landvater does not describe much less enable the method as a whole. At most, Landvater hints at financial planning for retail businesses. Second, Dulaney et al. teaches facing optimization constrained by shelf space, without any teaching of inventory management or problems constrained by budget. Combining the two might add features to Landvater, but they would not be the claimed features.

The Examiner relies primarily on one brief passage of Landvater (OA at 6-7), column 20, lines 29-47, for financial analytics driven by daily, item level simulation:

Financial Planning

30   Referring to FIG. **2**, another feature of system **20** is its financial planning system **400**. Financial planning system **400** is typically used by financial planners to more accurately estimate what is likely to happen in the future, and compare this projection to various budgets and other finan-

35   cial data. Financial planning system **400** multiples the projected sales forecasts by the selling price of the products and the cost of the products. This results in a projected financial plan showing the projected sales dollars, the projected cost of goods for those sales, and consequently the projected

40   gross margins. Financial planning system **400** also multiplies the projected replenishment shipments are multiplied by the cost of the products. This results in a projection of purchases, useful in cash flow planning. Using projected sales forecasts, financial planning system **400** calculates a

45   projected inventory. This is also multiplied by the cost of the products, resulting in a projected inventory investment in dollars, also useful in cash planning.

Exception Messages and User Interface

We purposely reproduced line 48, which is the title of the following section, to emphasize just how bounded the discussion of financial planning is in Landvater.

The passages of this excerpt that come closest to making the reference enabling and to providing a written description of the claimed subject matter as a whole are the ten-word passage, "compare this projection to various budgets and other financial data," in lines 34-35, and the eight-word phrase, "financial planning system 400 calculates a projected inventory" in lines 44-45. Landvater teaches "calculating a projected inventory investment in dollars" as multiplying inventory count by cost, without any further written description or enablement.

It is black letter law that any reference relied upon for a Section 103 rejection must provide a written description and enabling disclosure, *i.e.*, it must place the claimed invention in the possession of the public. 1-3 Chisum on Patents § 3.04 [1][b][v] to [1][c]. The clearest cases requiring that a reference make an enabling disclosure are in the chemical arts, where enablement is often an issue. *See, id., citing, In re Brown*, 329 F.2d 1006, 141 USPQ 245 (CCPA 1964); *In re Payne*, 606 F.2d 303, 314-15, 203 USPQ 245 (CCPA 1979) ("References relied upon to support a rejection under 35 U.S.C. 103 must provide an enabling disclosure, *i.e.*, they must place the claimed invention in the possession of the public ... .")

The Examiner relies on the 25 words or so repeated above to meet the following financial analytics limitations of claim 36 (OA at 7):

setting inventory budgets for groups of items; …

prorating the inventory budgets among the items, for a plurality of predetermined time periods; and

… compare[ing] the prorated inventory budgets for the items or aggregations of the items to the simulated future inventory for the items or aggregations of the items

Landvater does not give a written description or an enabling disclosure of these limitations, especially not in the context of this claim as a whole.

Whether Landvater teaches the claimed invention depends on the invention <u>as a whole</u> and the reference as a whole. We do not see the Examiner's analysis as considering either the invention or the reference as a whole:

I. THE CLAIMED INVENTION AS A WHOLE MUST BE CONSIDERED

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); Schenck v. Nortron Corp., 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983)

MPEP § 2142.02, at 2100-122 (Rev. 5, Aug. 2006).

[W]hen evaluating the scope of a claim, every limitation in the claim must be considered. USPTO personnel may not dissect a claimed invention into discrete elements and then evaluate the elements in isolation. Instead, the claim as a whole must be considered. See, e.g., Diamond v. Diehr, 450 U.S. 175, 188-89, 209 USPQ 1, 9 (1981) ("In determining the eligibility of respondents' claimed process for patent protection under § 101, their claims must be considered as a whole. It is inappropriate to dissect the claims into old and new elements and then to ignore the presence of the old elements in the analysis. This is particularly true in a process claim because a new combination of steps in a process may be patentable even though all the constituents of the combination were well known and in common use before the combination was made.").<

MPEP § 2106, at 2100-8.

Landvater, as a whole, considers financial analytics as an afterthought. Only 18 lines in a 24-column disclosure address financial planning. Building financial analytics on Landvater is like building on quicksand – there is too little there to support any serious weight. In particular, Landvater does not supply the detail of setting inventory budgets for *groups of items*. Landvater does not disclose *prorating inventory budgets* among items – there is nothing close to this level of detail in Landvater's financial planning discussion. Landvater does not compare inventory budgets to simulated future inventory, it only projects "inventory investment in dollars". One can imagine that many things would be "useful in cash planning", but Landvater stops short of providing a written description or an enabling disclosure of what we might imagine.

Taken as a whole, claim 36 is nuanced and teaches a particular, valuable way of calculating analytics that was not used by Landvater. This sort of analytics was not attempted by others in the art of record, perhaps because of the computing resources needed to conduct daily simulation at an item level, which is evident from the emphasis in Landvater on tricks that avoid performing extensive daily/item level simulation. *See*, col. 13, line 37-column 14, line 2; col. 23, line 38-col. 24, line 36; and limitations of

claims 1 c) and 30 c). In any case, the art of record does not teach the claimed analytical method <u>as a whole</u>.

Looking back to the mechanics of simulation, Landvater does not teach *setting notional deliveries for the items … unconstrained by the inventory budgets*. The only mention of "budget" anywhere in Landvater is set forth above, col. 20, line 34. This is not tied to the setting of notional deliveries. The passages cited from column 8 and 13-14 (OA at 7) do not mention any interaction of planned replenishments with budgets.

The only thing in claim 36 for which the Examiner relies on Dulaney et al. is reporting analytic results (OA at 7, last two lines), as opposed to calculating the analytics. Reporting is included in this claim more for Section 101 purposes than as a distinguishing limitation. Accordingly, the claim rises or falls on whether Landvater teaches the daily, item level simulation driving financial analytics that are claimed. Landvater does not.

Therefore, claim 36 should be allowable over Landvater in view of Dulaney et al.

<u>Claim 37</u>

Claim 37 includes the limitations:

further including:

calculating reduced notional deliveries for the items consistent with prorated open to buy inventory budgets; and

calculating lost sales for the items based on the reduced notional deliveries.

These limitations are not found in Landvater in view of Dulaney et al.

The Examiner turns to Dulaney et al., which has nothing to do with inventory dollar budgets. The word "budget" does not appear anywhere in Dulaney et al. Viewed as a whole, Dulaney et al. teaches a method of optimizing display space usage across products, either unconstrained (a showroom the size that Amazon.com advertises) or constrained by the realities of limited shelf space.

Neither Dulaney et al. nor Landvater teach *calculating reduced notional deliveries for the items consistent with prorated open to buy inventory budgets*. The combination cannot include features that neither reference supplies.

Combining Dulaney et al. with Landvater, without using claim 37 as a template or roadmap, would add a new feature to Landvater that would have nothing to do with claim 37. The safety stock section of replenishment planning in column 14 of Landvater

might be modified to optimize the number of product facings, but supplementing Landvater's safety stock analysis with optimal product facings has nothing to do with these claims. Of course, claim 37 cannot be used as a roadmap for combining the references. The Examiner needs objective evidence of a suggestion or motivation for "the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed." *In re Kotzab*, *supra*, 217 F.3d at 1371, 55 U.S.P.Q.2D (BNA) at 1317; *cited in In re Lee*. "Care must be taken to avoid hindsight reconstruction by using 'the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit.'" *Grain Processing Corp. v. American Maize-Products Corp.*, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988)

Therefore, claim 37 should be allowable over Landvater in view of Dulaney et al.

Claims 38-41 and 43-44

Claims 38-44 should be allowable over Landvater in view of Dulaney et al. for at least the same reasons as claims 36 and 37, from which they depend

Claims 45 and 46

Claims 45 and 46 include the limitations:

further including reporting the simulated future inventory levels that exceed the optimal stocking levels

These limitations are not found in Landvater in view of Dulaney et al.

The Landavter passage, col. 11, lines 25-50, on which the Examiner relies (OA at 7) does not read on this limitation. Instead, it calls for calculating when the forecast sales for a product justifies weekly forecasting instead of monthly forecasting. Col. 11, lines 32-39. Even then, no reporting is involved, because Landvater's feature is intended to automatically limit CPU and memory usage, without user intervention. Landvater's threshold calculations would never be reported to an inventory manager.

If an override is not specified, the logic proceeds to step **124** where a determination is made if the projected annual sales forecast for a product at a location exceeds the user-specified threshold for weekly forecasting (100 products, for example). If so, weekly forecasting is used, as indicated by step **126**. If not, then the logic proceeds to step **128**. 30

At step **128** a determination is made if the projected annual sales forecast for a product at a location is less than the user-specified threshold for weekly forecasting (a sales rate of 100 products year, for example), and greater than the 35 user-specified threshold for monthly forecasting (a sales rate of 12 products per year, for example). If so, then monthly forecasting is used, as indicated by step **130**. If not, then the logic proceeds to step **132**.

At step **132** a determination is made if the projected 40 annual sales forecast for a product at a location is less than the user-specified threshold for monthly forecasting (a sales rate of 12 products per year, for example). If so, then a longer time period is used for forecasting, as indicated by step **134**. The longer period may be user specified, and could 45 be any length of time, but for purposes of illustration might be one quarter of a year, or one-half a year.

In the case of monthly or longer forecast periods, weekly forecasts are accumulated into months (four or five weeks) or longer periods, and are then stored in the database **36**, as 50 indicated by step **136**

This passage, on plain reading, does not address the limitations of claims 45 and 46.

Therefore, claims 45 and 46 should be allowable over Landvater in view of Dulaney et al.

Claims 47-50

Claims 47-50 include the limitations:

further including reporting values of purchase orders that have been placed but not fulfilled for the items having the simulated future inventory levels that exceed the optimal stocking levels

further including reporting values exceeding minimum order quantities of purchase orders that have been placed but not fulfilled for the items having the simulated future inventory levels that exceed the optimal stocking levels

These limitations are not found in Landvater in view of Dulaney et al.

One use of this type of reporting is to empower an inventory manager to cancel pending orders that have not been fulfilled. Taking these claims as a whole and in light of how a user could, if they wanted, utilize the reported information, nothing in

Landvater or Dulaney et al. teaches the features emphasized in claims 47-50, either the features individually or combined as a whole with other features.

The Examiner relies (OA at 7) on the same Landavter passage, col. 11, lines 25-50, set forth on the previous page. Again, that passage calls automatically limiting CPU and memory usage by only making weekly forecasts for goods that reach a threshold sales volume. Col. 11, lines 32-39. Even then, no reporting is involved.

Therefore, claims 47-50 should be allowable over Landvater in view of Dulaney et al.

<u>Claim 51</u>

Claim 51 should be allowable over Landvater in view of Dulaney et al. for Lisa same reasons as claim 36, from which it depends.

<u>Claim 53</u>

Claim 53 includes the limitations:

wherein future sales levels are corrected for stockouts at respective selling locations associated with the items

These limitations are not found in Landvater in view of Dulaney et al.

The Examiner concedes (OA and 11) that Landvader does not address correction of future sales levels for stockouts. The concept in Dulaney et al., columns 5-6, is unrelated to generating an accurate simulation. The cited passages relate to an analysis that is detached from current inventory, all actual stockouts or simulation of future sales levels. The passages are directed to generation of a theoretical cost statistic that is a "critical variable" to use when optimizing shelf space allocation. They have nothing to do with claim 53 as a whole.

Therefore, claim 53 should be allowable over Landvater in view of Dulaney et al.

<u>Claim 62</u>

Claim 62 includes the limitations:

wherein the prorating is based on the simulated future sales

These limitations are not found in Landvater , col. 20 lines 29-47, on which the Examiner relies. This passage is set forth above, in the context of claim 36. There is no discussion of prorating or this claimed refinement of prorating in Landvader.

Therefore, claim 62 should be allowable over Landvater in view of Dulaney et al.

Claim 63

Claim 63 includes the limitations:

wherein the simulated future sales take into account any simulated lost sales due to stockouts for the item

These limitations are not found in Landvater in view of Dulaney et al.

As explained in the context of claim 53 above, the Examiner concedes (OA and 13) that Landvader does not address correction of future sales levels for stockouts. The concept in Dulaney et al., columns 5-6, is unrelated to generating an accurate simulation. The cited passages relate to an analysis that is detached from current inventory, all actual stockouts or simulation of future sales levels. The passages are directed to generation of a theoretical cost statistic that is a "critical variable" to use when optimizing shelf space allocation. They have nothing to do with claim 63 as a whole.

Therefore, claim 63 should be allowable over Landvater in view of Dulaney et al.

Applicants respectfully submit that claims 36-51 and 53-63 should be allowable over Landvater in view of Dulaney et al.

CONCLUSION

Applicants respectfully submit that the pending claims are now in condition for allowance and thereby solicit acceptance of the claims, in light of these amendments.

The undersigned can ordinarily be reached at his office at (650) 712-0340 from 8:30 a.m. to 5:30 p.m. PST, Monday through Friday, and can be reached at his cell phone at (415) 902-6112 most other times.

Respectfully submitted,

Dated: 10 October 2006

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